

PT 00-26

Tax Type: Property Tax

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**DAVID &
SUSAN SWANK
AND
LEONARD &
SHIRLEY WILDE,
APPLICANTS**

v.

**DEPARTMENT OF REVENUE
STATE OF ILLINOIS**

**Nos: 99-PT-0033
(98-101-0145)
and
99-PT-0039
(98-101-0158)**

**Real Estate Exemptions
for 1998 Tax Year**

**P.I.N.S: 203B-395
and
149C-031**

Winnebago County Parcels

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Shawn C. Fullbright of Guyer & Enichen on behalf of David and Susan Swank and Leonard and Shirley Wilde (hereinafter collectively referred to as the “applicants”).

SYNOPSIS: These consolidated proceedings raise the question of whether two separate, privately-owned properties, one identified by Winnebago County Parcel Index Number 203B-395, the other identified by Winnebago County Parcel Index Number 149C-031, qualify for exemption under Section 15-35 of the Property Tax Code, 35 ILCS 200/1-1, *et seq* (hereinafter the “Code”).

The controversies arise as follows:

With respect to Docket No. 99-PT-0033, applicants David and Susan Swank (hereinafter the “Swanks”) filed an Application for Property Tax Exemption with the Winnebago County Board of Review (hereinafter the “Board”) on November 2, 1998. Said application alleged that real estate identified by Winnebago County Parcel Index Number 203B-395 was exempt from 1998 real estate taxes under Section 15-35 of the Code. (Dept. Group. Ex. No. 1-B).

The Board reviewed the Application and thereafter recommended to the Illinois Department Of Revenue (hereinafter the “Department”) that the requested exemption be denied. *Id.* On March 11, 1999, the Department issued a determination finding that that the subject property was neither in exempt ownership nor in exempt use. (Dept. Ex. No. 2-B). The Swanks subsequently filed a timely appeal as this denial and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department's denial be affirmed.

With respect to Docket No. 99-PT-0039, applicants Leonard and Shirley Wilde (hereinafter the “Wildes”) filed an Application for Property Tax Exemption with the Board on November 3, 1998. Said application alleged that real estate identified by Winnebago County Parcel Index Number 149C-031 was exempt from 1998 real estate taxes under Section 15-35 of the Code. (Dept. Group. Ex. No. 1-A).

The Board reviewed the Application and thereafter recommended to the Department that the requested exemption be denied. *Id.* On March 11, 1999, the Department issued a determination finding that that the subject property was neither in

exempt ownership nor in exempt use. (Dept. Ex. No. 2-A). The Wildes subsequently filed a timely appeal this denial (Dept. Ex. No. 4) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department's denial be affirmed.

FINDINGS OF FACT:

A. Case No. 99-PT-0033 (David & Susan Swank)

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. No. 2-B.
2. The Department's position in this matter is that real estate identified by Winnebago County Parcel Index 203B-395 (hereinafter referred to in all subsequent findings of fact that affect this case as the "subject property") is not in exempt ownership and not in exempt use. *Id.*
3. The subject property is located at 730 N. Church Street, Rockford, IL and improved with a two story building. Dept. Group Ex. No. 1-B Applicant Ex. No. 9; Tr. pp. 87-89.
4. The Swanks acquired ownership of the subject property by means of a Corporation Warrantee Deed dated April 30, 1987. This deed named the Swanks as joint-tenant owners of the subject property. However, the Swanks subsequently executed a Warrantee Deed in Trust that conveyed their individual interests in the subject property into the Susan A. Swank Trust. Applicant Group Ex. No. 1; Tr. pp. 63-66.
5. Susan and David Swank are the sole beneficiaries of the Susan A. Swank Trust. They are also the sole shareholders and directors of Swank Educational

Enterprises, (hereinafter “SEE”) an Illinois for-profit corporation duly incorporated under the Business Corporation Act of Illinois on January 23, 1986. *Id*; Applicant Ex. No. 2; Tr. pp. 67-68, 93.

6. SEE operated under the assumed name of, and did business as, Rockford Business College (hereinafter “RBC”) throughout the 1998 assessment year. Tr. p. 69.
7. RBC is (and during 1998 was) accredited by the Accredited Council of Independent Colleges and Schools (hereinafter “ACICS”), an agency that derives its authority from the United States Department of Education. Tr. pp. 70-71, 76-77, 78-79.
8. RBC is also duly certified by and registered with the Illinois State Board of Higher Education (hereinafter the “ISBHE”) and the Illinois State Board of Education. It maintained those certifications throughout the 1998 tax year. Applicant Ex. No. 4, 5, 8; Tr. p. 72, 75-7, 77-78.
9. ISBHE authorized RBC to confer two-year associate of applied science degrees in a variety of business-related fields of study, including *inter alia*, business administration, accounting, and computer information systems.¹ It conferred 71 such degrees in 1998. Applicant Ex. Nos. 4, 5, 7; Tr. p. 71-75; 86-87.
10. Credits for coursework taken at RBC can be transferred or used to satisfy degree requirements at other colleges and universities, such as Northern

1. For details about applicant’s curricula and a complete description of all of its degree programs, *see*, Applicant Ex. Nos. 4, 5, 7; Tr. pp. 98-105.

Illinois University and Rock Valley Community College. Applicant Ex. No. 6;
Tr. pp. 82-84, 87.

11. The Swanks must approve all expenditures made in the ordinary course of RBC's business. They also pay these expenses, which include necessary equipment repairs and property taxes, from an account that is funded by RBC's tuition revenues. Tr. pp. 93-98.

12. The Department issued RBC an exemption identification number, which exempts it from payment of Illinois Use and related sales taxes, on January 10, 1997. The Department issued this number pursuant to Section 3-5(4) of the Use Tax Act, 35 **ILCS** 105/1 *et seq*, and based same on its conclusion that RBC is "organized and operated exclusively for educational purposes." Applicant Ex. No. 3.

13. The subject property was used for no purpose other than as a venue for RBC's degree programs throughout the 1998 assessment year. Tr. pp. 96-97.

B. Case No. 99-PT-0039 (Leonard and Shirley Wilde)

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. No. 2-A;

2. The Department's position in this matter is that real estate identified by Winnebago County Parcel Index 149C-031 (hereinafter referred to in all subsequent findings of fact that affect this case as the "subject property") is not in exempt ownership and not in exempt use. *Id.*

3. The subject property is located at 6419 Forrest Hills Road, Rockford, IL and improved with a two story building. Dept. Group Ex. No. 1-A Applicant Ex. No. 10; Tr. p. 9.
4. The Wildes acquired ownership of the subject property by means of a trustee's deed dated August 19, 1994. This deed was executed in furtherance of a trust agreement which named the Wildes as trust beneficiaries. Applicant Ex. No. 8; Tr. pp. 9-10.
5. The Wildes are the founders, lone stockholders and are solely responsible for the management of "Christian Learn 'N Care, Ltd," (hereinafter "Learn 'N Care"), an Illinois for-profit corporation duly incorporated under the Business Corporation Act of Illinois on December 21, 1979. Applicant Ex. No. 1; Tr. pp. 11-12, 42-44.
6. Learn 'N Care was originally organized for purposes of conducting a child care facility but later amended its Articles of Incorporation to reflect that "the purpose for which the corporation is organized is to conduct an educational facility." Applicant Ex. Nos. 1, 3.
7. Learn 'N Care conducted that facility under the assumed corporate name of "Rainbow Academy & Learning Center" (hereinafter "Rainbow") throughout the 1998 assessment year. Applicant Ex. Nos. 2; Tr. pp. 11-12.
8. Rainbow is a private elementary (1st through 6th grade) school,² duly certified by and registered with the Illinois State Board of Education. It maintained that certification, and also offered State-approved pre-kindergarten and

2. For further details about Rainbow's curriculum and other information about its operations, *see*, Applicant Ex. Nos. 5, 6.

kindergarten programs, throughout the 1998 tax year. Applicant Ex. No. 5, 6, 7; Tr. pp. 23.

9. Enrollment in Rainbow's programs for 1998 was as follows:

PROGRAM	TOTAL ENROLLMENT
Pre-kindergarten	20 children
Kindergarten	34 children
Elementary School	68 students ³

Applicant Ex. No. 7

10. Rainbow's primary source of operating revenue for 1998 was tuition fees, which it charged to the parents of those enrolled in its programs. The Wildes paid all of Rainbow's operating expenses, including property taxes, out of a separate account that was funded by these fees. Applicant Ex. No. 5; Tr. p. 43.

11. The Department issued Rainbow an exemption identification number, which exempts it from payment of Illinois Use and related sales taxes, on February 11, 1994. The Department issued this number pursuant to Section 3-5(4) of the Use Tax Act, 35 **ILCS** 105/1 *et seq.*, and based same on its conclusion that Rainbow is "organized and operated exclusively for educational purposes." Applicant Ex. No. 4.

12. The subject property was used for no purpose other than as a venue for Rainbow's pre-kindergarten, kindergarten and elementary school programs throughout the 1998 assessment year. Applicant Ex. Nos. 9, 10; Tr. pp. 32-40.

3. For a detailed breakdown of applicant's enrollment (i.e. by grade level), *see*, Applicant Ex. No. 7.

CONCLUSIONS OF LAW:

An examination of the record established these applicants have not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting either of the subject properties from 1998 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that said properties do not qualify for exemption under 35 ILCS 200/15-35 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

In furtherance of its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq* (hereinafter the “Code”). The provisions of that statute which govern disposition of the present matter are contained in Section 200/15-35 of the Code, which, in relevant part, provides for the exemption of:

All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any State of the United States. Also exempt is:

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities, and school owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities or other campus organizations.

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

35 ILCS 200/15-35.

Section 15-35 and other statutes exempting real estate from taxation are to be strictly construed, with all debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Here, the precise “debatable question” is whether two separate sets of private individuals, the Swanks and the Wildes, are entitled to receive property tax exemptions under Section 15-35. For the following reasons, I conclude they are not.

First, the preposition "of," which appears in the first paragraph of Section 15-35 and Section 15-35(b), connotes that both provisions contain ownership requirements. Accord, Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968). Those requirements are very specific in that they pertain only to property owned by “schools.”⁴

The record contains ample evidence to support the conclusion that Rainbow and RBC qualify as “schools.” Thus, that is not the true source of controversy herein. Rather, the issue of decisive impact in this case is whether the private individuals who own the properties on which the “schools” are located are entitled to receive property tax exemptions under Section 15-35.

The for-profit corporate entities that own and operate the “schools” are legally distinct from the private individuals who own the subject properties. The ramifications of

4. The legal definition of the term “school” is, for property tax purposes, as follows:

A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptation [sic] of the word.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 137 (1911).

this dichotomy originate in Section 9-175 of the Code, which states, in relevant part, that "[t]he owner of property on January 1 in any year shall be liable for the taxes of that year..[.]" 35 **ILCS** 200/9-175.

Applicants correctly point out that land trust beneficiaries, such as the Wildes and the Swanks, are the owners of real estate for property tax purposes. People v. Chicago Title and Trust, 75 Ill.2d 479 (1979) (hereinafter "CT&T"). They also correctly assert that the legal indicia of ownership are the right to control the property and the right to enjoy its benefits. CT&T, *supra*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996). What they fail to recognize however, is that the private individuals who exercise such indicia of ownership herein are not the statutorily-intended beneficiaries of the exemption set forth in Section 15-35.

Section 15-35 contains numerous references to "schools." Those references, coupled with the absence of any references to private individuals, are manifestations of Constitutional and legislative intents to extend the exemption articulated therein "*only to those private institutions which provide at least some substantial part of the educational training which otherwise would be furnished by publicly supported schools, academies, colleges and seminaries of learning and which, to some extent, thereby lessen the tax burden imposed upon our citizens as the result of the public educational system.*" People ex rel Brenza v. Turnverein Lincoln, 8 Ill.2d 188, 202-203 (1956) (hereinafter "Brenza") (emphasis added).

The two entities that qualify as "schools" herein, RBC and Rainbow, are not the applicants in these cases. Nor are the two for-profit corporations that control their respective operations. Rather, the applicants herein are private individuals who are legally obligated to pay taxes on the properties they own. For this reason, granting the exemptions these individuals request herein is tantamount to relieving them of their otherwise legally valid obligation to pay property taxes without legal justification therefor. Absent such a justification, it stands to reason that these individuals, and not the

“schools” themselves, will obtain private pecuniary profit from the tax savings which result from such exemptions.

This is problematic because those who would receive such benefits herein are also the sole shareholders in, and the only directors of, the for-profit corporations that own and operate Rainbow and RBC.⁵ Such corporations are, by their very nature, structured to confer monetary profits and other entrepreneurial rewards on those who hold ownership interests therein.

Those who reap such rewards are, in the present case, persons whose entrepreneurial uses of the subject properties directly contravene the prohibition against use for profit⁶ contained in Section 15-35. In this sense, the present case is distinguishable from those cases wherein our courts have sought to enforce this statutory prohibition by either: (1) imposing a constructive trust on the nominal title holder (People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944), (hereinafter "Goodman"); or, (2) concluding that the nominal title holder was but an “alter ego” of an otherwise exempt entity. (Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062 (5th District, 1981), (hereinafter "Booker").

Section 15-35(c) does provide for the exemption of properties held “in trust” for certain types of educational uses. *See*, 35 ILCS 200/15-35(c). However, this provision is inapplicable herein for several reasons. First, the nominal title holders granted exemptions in Goodman and Booker were created for the express purpose of enabling two tax-exempt State Universities (the University of Illinois in Goodman; Southern Illinois University in Booker) to overcome statutory prohibitions which made it legally impossible for the Universities to assume title in their own names.

5. *See*, Articles of Incorporation admitted as Applicant Ex. No. 1 in Case No. 99 PT 0039 (Swank) and Applicant Ex. No. 2 in Case No. 99 PT 0033 (Wilde).

6. That prohibition is set forth in the first paragraph of Section 15-35, which, in relevant part, exempts “... all property of schools, not sold or leased or otherwise used with a view to profit...[.]” 35 ILCS 200/15-35.

This is not the case here, as I take administrative notice that Section 3.10 of the Business Corporation Act of 1983 (805 **ILCS** 5/1.01 *et seq*) vests the corporations that control Rainbow's and RBC's business affairs with express authority to: (1) "purchase .. own, hold, use, and otherwise deal in and with any real or personal property, or any interest therein, situated within this State[;]" (805 **ILCS** 5/3.10(d)); and, (2) "sell, convey, mortgage, pledge .. and otherwise dispose of all or any part of [their] property and assets." (805 **ILCS** 5/3.10(e)). Hence, neither these corporations, nor the private individuals who are the sole stockholders therein and only directors thereof, are affected by the types of legal restrictions that were central to the outcomes in Goodman and Booker. Therefore, those individuals' decisions to place ownership interests in themselves must be considered non-exempt business judgments.

Second, the properties at issue in Goodman and Booker were located on and ultimately controlled by State Universities. As such, the real party in interest in both of those cases was itself a tax-exempt entity, that being the State of Illinois.⁷ Accordingly, contrary results in Goodman and Booker would have had the undesired policy effect of requiring the State of Illinois to delve into the public treasury to pay property taxes. *Accord*, United States v. Hynes, et al., 20 F.3d 1437 (7th Cir. 1994) (noting that the rationale for exempting property of a public taxing body is to prevent that body from being forced into the inconsistency of taxing itself in order to raise money to pay over to itself, which money could be raised only by taxation).

This rationale does not apply herein because the real parties in interest are not tax-exempt entities. They are instead private individuals whom the General Assembly did not intend to benefit through enactment of the statute under which they are presently seeking their respective exemptions. Brenza, supra, at 202-203. Therefore, such parties

7. Property of the State of Illinois is, unlike that at issue herein, exempt solely by virtue of the State's ownership interest therein. 35 **ILCS** 200/15-55. *See also*, Public Building Commission of Chicago v. Continental Illinois National Bank & Trust Company of Chicago, 30 Ill.2d 115 (1963).

are not comparable to the ones whose properties were held exempt in Goodman and Booker.

The Swanks and Wildes nevertheless insist that Goodman and Booker are applicable herein, primarily because of testimonial evidence aimed at proving that it is difficult to distinguish between themselves as owners of the subject properties and themselves as owners and administrators of the respective “schools.” Tr. 44, 96. This reasoning is flawed for numerous reasons, first among which is that the “schools” are operated by separate for-profit corporations.

These corporations enjoy legal identities, created by operation of their status as Illinois for-profit corporations, that are separate and distinct from the private individuals who are their sole shareholders and directors. More importantly, it cannot be stressed enough that these corporate entities are not the applicants in their respective cases. Nor are they the parties liable for payment of real estate taxes under Section 9-175 of the Code. Accordingly, it is of no legal significance herein that the Swanks and the Wildes, who *are* the applicants herein and *are* liable for payment of real estate taxes in their capacities as private individuals, are also the sole shareholders and directors of such corporations. Therefore, for all the above-stated reasons, I conclude that applicants’ reliance on Goodman and Booker is misplaced.

Applicants’ reliance on three other cases, Association of American Medical Colleges v. Lorenz, 17 Ill.2d 125 (1959) (hereinafter “Lorenz”); Wheaton College v. Department of Revenue, 155 Ill. App.3d 945 (2nd Dist. 1987) (hereinafter “Wheaton College”); and Northern Illinois University v. Sweet, 237 Ill. App.3d 28 (2nd Dist. 1992) (hereinafter “NIU”) is likewise inapposite. The Lorenz appellant was not itself a school. It was, however, an organization that strictly provided academic-related services⁸ to its member institutions, all of which were tax exempt medical schools.

8. These services included, *inter alia*, sponsoring admission tests for its member institutions, appraising curricula of member medical schools and participating in the process of accrediting

The same cannot be said of the applicants herein, for both are private individuals rather than organizations that provide needed services to tax exempt educational institutions. More importantly, neither the Wildes nor the Swanks have any member institutions to service. Rather, they service their own non-exempt pecuniary interests by being the sole shareholders in for-profit corporations that happen to operate “schools.”

Such fortuity does not provide a legally sufficient basis for exemption. *Accord*, Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919 (1st Dist. 1988) (denying exemption to a private individual who leased property to a church on grounds that such individual should not receive an exemption merely because he leased property to an exempt entity). Nor is that mere coincidence in any way analogous to the situation in Lorenz. Therefore, that case is not dispositive herein.

The NIU case is one wherein the court held that the property at issue therein: (1) did not qualify for exemption as “property of the State of Illinois”⁹ because the grantor-private individual imposed too many limitations on the use and disposition of said property; and, (2) did not qualify for exemption under the then-applicable version of Section 15-35¹⁰ because the applicant failed to prove that said property was primarily used for educational purposes. NIU, *supra* at 35, 38.

I have previously discussed the State ownership exemption and concluded that it does not apply herein. *See, supra*, at 11-13. Moreover, these applicants’ principal barrier to exemption lies not so much in lack of exempt use, but rather, in the fact that neither they nor the for-profit corporations they control are the statutorily-intended beneficiaries

all medical schools throughout the United States. For further details about these services, *see*, Lorenz, *supra*, at 129.

9. For further analysis of that exemption, *see*: (1) discussion of People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062 (5th District, 1981), *supra*, at 11-13; and (2) footnote 7, *supra*, at 12.

10. That version, which, for present purposes was substantially identical to Section 15-35, was found in Ill. Rev. Stat. ch. 120, ¶ 500.1. NIU, *supra*, at 30.

of the exemption articulated in Section 15-35. Hence, neither of the NIU holdings are applicable herein.

With respect to Wheaton College, I briefly note that the holding therein pertained to a non-exempt leasing arrangement between Wheaton College and two private individuals. *Id.* at 946, 949. Neither of two properties presently at issue are leased. Furthermore, the result in Wheaton College is consistent with the result in these cases, at least inasmuch as it denies exemption to interests in real estate that are undertaken primarily for the benefit of private individuals. *Id.* at 949.

Finally, the fact that Rainbow and RBC hold sales tax exemptions does not alter any of the preceding analysis. The Department issued those exemptions to entities that are legally distinct from the applicants in these cases. Moreover, neither of those entities are the applicants herein. Thus, those sales exemptions do not provide a legally sufficient basis for concluding that the subject properties qualify for exemption under Section 15-35.

In summary, Section 15-35 and its related subsections impose very specific ownership requirements. These requirements must be strictly construed so that they serve to exempt only those entities that qualify as “schools.” Neither the private individual-applicants herein nor the for-profit corporations they control qualify as “schools” within the meaning of Section 15-35. Therefore, the Department’s determinations denying the properties these individuals own exemption from 1998 real estate taxes under Section 15-35 of the Property Tax Code should be affirmed.

WHEREFORE, for the reasons set forth above, I recommend that:

- (1) With respect to Docket No. 99 PT 0033, real estate identified by Winnebago County Parcel Index Number 203B-395 not be exempt from 1998 real estate taxes under Section 15-35 of the Property Tax Code;

- (2) With respect to Docket No. 99-PT-0039, real estate identified by Winnebago County Parcel Index Number 149C-031 not be exempt from 1998 real estate taxes under Section 15-35 of the Property Tax Code.

August 9, 2000

Date

Alan I. Marcus
Administrative Law Judge